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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,728	09/29/2003	Cordelia G. Rasa	21107	1937
210	7590	07/23/2004	EXAMINER	
MERCK AND CO INC			SHAW, ELIZABETH ANNE	
P O BOX 2000			ART UNIT	
RAHWAY, NJ 070650907			PAPER NUMBER	
			3644	

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/673,728

Applicant(s)

RASA ET AL.

Examiner

Elizabeth A. Shaw

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Georgi (5,133,289). Georgi teaches the use of a cylindrical, transparent hematophagous feeder having a blood host housing unit 10 capable of firmly constraining a blood host and maintaining a spatial relationship of a desired feeding area and having a receiving port 32; a hematophagous feeder containment unit 16 including a feeding terminal wall 12, it is considered that the round containment unit 16 is capable of or adapted to be inserted into a receiving port of a housing unit. The feeding terminal wall is composed a mesh having pore openings of up to at least 400 micrometers. Membrane 12 is considered to be capable of or adapted to act as an O-ring, causing the containment unit 16 to be frictionally maintained in a spatial relationship to the housing unit 10.

Note that statements of intended use or field of use, "adapted to" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re*

Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2<sup>nd</sup> 1647.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Georgi (5,133,289) in view of Willinger et al (3,859,961). Georgi teaches the use of a hematophagous feeder having a containment unit 16 including a feeding terminal wall 12, it is considered that the round containment unit 16 is capable of or adapted to be inserted into a receiving port of a housing unit. The feeding terminal wall is composed a mesh having pore openings of up to at least 400 micrometers. Georgi does not show the use of a housing to hold a blood host to the feeder. Willinger et al show an apparatus capable of being used for feeding hematophagous feeders from a blood host comprising a blood host housing unit 76 composed of a cylindrical, transparent tube, including a receiving port (unnumbered), the housing unit 76 adapted to constrain a blood host within the housing unit, it is considered that the size of the host inserted within the housing unit would determine how firmly confined the animal would be, such that a desired feeding area of the host is maintained at the receiving port. The housing unit 76 having at least one metallic mesh sheet 114 providing a feeding terminal wall. The housing having an annular ridge 82, see figure 4, capable of acting as an O-ring

and bushing to frictionally fit and maintain spatial relationship with end covering and feeding terminal walls. With respect to claim 1, to use the hematophagous feeder of Georgi with the housing of Willinger et al would have been obvious to one skilled in the art in order to present the hematophagous feeders an opportunity to feed as naturally as possible such that testing and studies can be performed with health specimens in as natural an environment as is possible. With respect to claim 6, to use mesh openings of about 500 micrometers in the combination of Georgi and Willinger et al would have been obvious to one skilled in the art in order to allow the feeders more access to the skin of the blood host. With respect to claim 7, the steps of placing the blood host in the housing, placing the hematophagous feeders into a containment unit adapted for insertion into the housing and allowing the feeders to feed through the feeding terminal wall of the combination of Georgi and Willinger et al would have been obvious to one skilled in the art in order to provide the best possible conditions for feeding and studying the hematophagous feeders in a contained environment.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on feeders are: patterson (4,212,267), Flagg (4,224,898), Georgi et al (4,850,305), Thomas et al (5,849,262), Siegel (5,927,234), Lohsomboon (6,561,125), Balto (2002/0100426) and Schafhalter (2002/0112672).

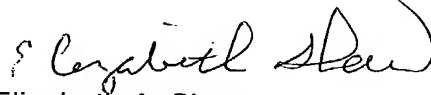
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Elizabeth A. Shaw  
Examiner  
Art Unit 3644

July 20, 2004

  
MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER